

No. 46717-8-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

RAUL CASTILLO LOPEZ,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Supplemental Brief

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I. ARGUMENT

A. **STATE V HAMPTON HAS BEEN OVERTURNED. THE TRIAL COURT IS FREE TO CONSIDER ALL RELEVANT INFORMATION IN DECIDING WHETHER TO ALLOW SUBSTITUTION OF DEFENSE COUNSEL.**

In his opening brief and at oral argument, the Appellant relied heavily on *State v. Hampton*, 182 Wn. App. 805, 332 P.3d 1020 (2014). That Division I, Court of Appeals case was reversed on November 19, 2015, by the Washington State Supreme court. *State v. Hampton*, Washington State Supreme Court No. 90811-7. References in this brief to *Hampton* will be to the Washington State Supreme Court opinion.

In reversing the Division I Court of Appeals, the Washington State Supreme Court ruled that the trial court should consider all relevant information in determining whether to allow substitution of counsel. *Hampton*, at page 14. Relevant factors include eleven enumerated factors. *Hampton*, at page 14. However, not all eleven factors need to be addressed. *Hampton*, at page 15. Most importantly to the Castillo-Lopez case is that RCW 10.46.085 can now be considered by the court in determining whether or not to allow substitution of counsel. The Trial Court mentioned the requirements in that statute in the Court's colloquy with counsel. RP 4 (06-19-

2014). Sexual Assault cases with a minor victim cannot be continued without the court finding a compelling reason. RCW 10.46.085.

“We have characterized that balancing by the trial court as weighing the defendant’s right to choose his counsel against the public’s interest in the prompt and efficient administration of justice.” *Hampton*, at page 6, *citing State v. Aguirre*, 168 Wn.2d 350, 365, 229 P.3d 669 (2010).

The trial court may also consider the effect of the request for continuance on its calendar. *Hampton* at page 14. That’s what happened in Mr. Castillo-Lopez’s case. The trial court considered the fact that if the court continued cases simply because a new attorney wanted in, then cases would not get to trial. RP 6, (07-03-2014). The court also noted that the current, court appointed counsel had done all the work already, and was ready for trial as scheduled. RP (06-19-2014). The defendant himself did not want a continuance. RP 6, 8 (07-03-2014). There was no claim of ineffective assistance of counsel on appeal.

II. CONCLUSION

The Division I Court of appeals decision in *State v. Hampton* has been overturned. The trial court may now consider all relevant information in addressing substitution of counsel, including the

impact on a minor victim and the court's own calendar. The court addressed these two issues in its colloquy with counsel. The defendant received a timely, fair trial, with effective counsel. Therefore, the trial court did not abuse its discretion, and its decision to deny the substitution of counsel should be upheld.

RESPECTFULLY submitted this 24th day of November,
2015.

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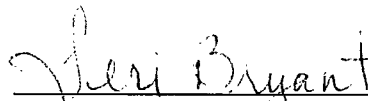
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DECLARATION OF SERVICE

Ms. Teri Bryant, paralegal for J. Bradley Meagher, Chief Criminal Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On November 24, 2015, the appellant was served with a copy of the **Respondent's Supplemental Brief** by email via the COA electronic filing portal to John Hays, attorney for appellant, at the following email address: jahayslaw@comcast.net.

DATED this 24th day of November, 2015, at Chehalis, Washington.



Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

LEWIS COUNTY PROSECUTOR

November 24, 2015 - 2:20 PM

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